REMARKS

The present Amendment is in response to the Office Action mailed January 28, 2009. Claims 30, 31, 37, 53, and 54 are cancelled and claims 29, 32, 34, 52 and 57 are amended. Claims 29, 32-52, 55-59 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

I. REJECTION UNDER 35 U.S.C. 101

The Office Action rejects claims 29-52 under 35 U.S.C. § 101 indicating that such claims are directed to functional descriptive material per se. The rejection indicates that claim 29 fails to disclose the apparatus or machine the network items of apparatus receive data from or send data to, or the acts that transform particular articles to a different state or thing related to receiving or sending data.

The Applicant respectfully asserts that the items of apparatus are sufficient machines to meet the requirements of 35 U.S.C. § 101. These items of apparatus can be many different completely **tangible** types of apparatus. For example, as disclosed in the specification, the items of apparatus can include an on-site office 4, a human operator computer terminal 16, a mobile geography altering unit such as a bulldozer 24, tipper truck, mechanical shovel, a static floodlight or signaling light 26, a fixed sensor unit 28, a TPS total station 30, and/or a wireless data communication terminal – **all completely tangible machines**. The method of claim 29 uses an organizational hierarchy of these tangible apparatus to devise an individual device address

based on the determined dependency of a civil engineering worksite, a landscaping worksite, a road or rail link construction worksite, or a mining work site, which is used to establish a communication link with the particular tangible apparatus.

To illustrate the subject matter, in the instance where communication to a bulldozer is established using a device address converted from an address structure reflecting the hierarchical position of the **bulldozer** according a determined dependency relation of **a road construction site** the bulldozer is operating on to **modify** the geography of the site, such a scenario would clearly not be considered as non-functional per se. Rather, such elements are clearly related to establishing communication with tangible articles and a method performed by a management means that includes a **processor** and **memory** – thus also a tangible machine. Therefore, the Applicant respectfully requests that the rejection of the claims under § 101 be withdrawn as the claims are clearly directed to statutory subject matter.

II. CLAIM OBJECTIONS

The Office Action objects to claims 31, 32, 34, and 57. Claim 31 is canceled; therefore the objection to claim 31 is moot. Claims 32, 34, and 57 have been amended to provide proper antecedent basis. As such, the Applicants respectfully request that the rejections of claims 32, 34, and 57 be withdrawn.

III. PRIOR ART REJECTIONS

A. Rejection Under 35 U.S.C. §102(b)

The Examiner rejects claims 29-32, 44-48, 50-55 under 35 U.S.C. § 102(b) as being unpatentable over *Sharpe* (U.S. Patent No. 5,960,214). According to MPEP §2131, a claim is anticipated under 35 U.S.C. §102(b) only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. The reference must show the identical invention in as complete detail as is contained in the claim. Finally, the elements must be arranged or combined as required by the claim.

Claim 29 has been amended, in part, to incorporate elements similar to that previously presented in claims 30, 31 and 37; and claim 52 has been amended, in part, to incorporate similar elements from claims 37, 53 and 54. For example, claims 19 and 52 require operating by converting said address structure reflecting the hierarchical position of said selected item of apparatus into a corresponding device address for accessing said selected item of apparatus on said electronic network.

In the Office Action, column 16, lines 25-46 and column 15, lines 9-22 of *Sharpe* were relied upon to reject the elements of claims 30, 31, 53, and 54. These locations within *Sharpe* however do not teach operating by converting said address structure reflecting the hierarchical position of said selected item of apparatus according to a determined dependency relationship **of the worksite** into a corresponding device address for accessing said selected item of apparatus on said electronic network.

More specifically, column 15, lines 9-22 of Sharpe disclose:

> The PhysicalTag, DeviceID, and DeviceTag objects relate to or are associated with the "PhysicalTag," "DeviceID," and "DeviceTag" collections of the Root object, respectively, and are used to uniquely define a particular device connected to or associated with the FMS system **10**. A device ID typically includes a triplet of information comprising the name of the device manufacturer, the model number of the device, and the serial number of the device. Device tags and physical tags usually refer to a location of the device in a plant or a process such as the process **12**. The value of a physical tag and/or a device tag can be, for example, an alphanumeric code associated with a specific physical location in the plant or any other description of a physical location. For HART devices, the physical tag is

And, column 16, lines 25-46 disclose:

> of FIG. **3**. Likewise, every other OLE object within the hierarchy of FIGS. **3** and **4** can be identified by a unique moniker derived by traversing a path from the Root object at the top of the hierarchy of FIG. **3** through to the particular OLE object. Thereafter, the properties and methods of any of the OLE objects within the hierarchy of FIGS. **3** and **4** can be referenced and obtained using the moniker developed for that OLE object.
>
> More particularly, a moniker can be determined from the hierarchy of FIGS. **3** and **4** by compiling a string comprising the quoted and the unquoted/underlined expressions encountered in traversing a path from the Root object in FIG. **3** to the OLE object of interest, and separating these expressions with an exclamation point ("!"). For example, the moniker for a Block object can be any of the following:
>
> Root!BlockTag!Block Tag!
>
> Root!PhysicalTag!HART Tag!Tag!HART Tag
>
> Root!DeviceID!Unique Identifier!HART
>
> Root!Net!TCP/IP Node Name!Port
>
> Name!Modem!Station Address!Tag!HART Tag

Thus, as these excerpts illustrate, *Sharpe* does not teach each and every element of claims 29 and 52. That is *Sharpe* does not teach operating by converting said address structure reflecting the hierarchical position of said selected item of apparatus according to a determined dependency relationship **of the worksite** into a corresponding device address for accessing said selected item of apparatus on said electronic network. Therefore, the Applicant respectfully requests that the rejections of claims 29 and 52, as well as the rejections of the claims that depend therefrom, be withdrawn.

Further, the amendments herein restrict the field of the invention to four disclosed types of worksites. The feature "said networked items of apparatus are organized in a plurality of hierarchical levels according to a determined dependency relationship of the worksite" has to be read with the restriction to the four types of worksite. A hierarchical level depending on the relationship on these types of worksite are **fundamentally different** to a hierarchical position of a selected item of apparatus defined by the selected item or the information defining the device data associated with the devices, as disclosed by *Sharpe*.

Further, *Sharpe* doesn't disclose "items of apparatus organized in a plurality of hierarchical levels according to a determined dependency relationship of the worksite" and "converting said address structure reflecting the hierarchical position of said selected item of apparatus into a corresponding device address for accessing said selected item of apparatus on said electronic network". Where *Sharpe* is mentioning a hierarchy, Sharp is referring to a hierarchy to identify and categorize all of the types of information (column 5, lines 4-6) and **not** hierarchical levels according to a determined dependency relationship of the worksite. Therefore *Sharpe* does not disclose the claimed hierarchy to be converted to a device address.

The differences between *Sharpe* and the Applicant's claimed invention is clearly pointed out in the Abstract of *Sharpe*:

> The interface is based on a predefined hierarchy of categories of information defining the device data associated with the smart field devices, and is implemented using an OLE object for each of the predefined categories of information.

The difference between the Applicant's claimed invention and *Sharpe* is also readily apparent throughout the specification of *Sharpe*:

> In particular, a hierarchy is created to identify and categorize all of the types of information and data represented by one or more DDL's associated with one or more smart devices connected within a system and the interrelationships between those categories of information and data.

Column 5, lines 4-9

> Preferably, this hierarchy includes a set of objects of different types which are defined within an object-oriented protocol, such as the now well-known Object Linking and Embedding (OLE) protocol.

Column 5, lines 20-23.

> the particular OLE hierarchy which is preferably used by the FMS system 10 is an OLE object hierarchy which has been developed to categorize all of the different types of information and the interrelationships between the different types of information.

Column 9, lines 30-35.

The restriction of the claimed invention by specific worksites also supports an important difference to the teachings of *Sharpe*, since *Sharpe*'s solution is a management system for specifically different applications:

> Typically process plants (such as chemical refinery plants and drug manufacturing plants, for example) include many field devices which control and measure parameters within the process. Each field device may be a control device (such as a flow valve controller), a measurement device (such as a temperature gauge, pressure gauge, flow meter, etc.) and/or any other device that affects or determines a value associated with a process.

Thus, as Sharp does not teach or suggest the claimed element, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

B. Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 33-36, 38-43 and 56-59 under 35 U.S.C. § 103(a) as being unpatentable over *Sharpe* (U.S. Patent No.5,960,214) in view of Uhler et al. (U.S. Patent No. 2001/0039587). The Examiner rejects claims 37 and 49 under 35 U.S.C. § 103(a) as being obvious over *Sharpe*.

Claims 33-37, 38-43, and 49 depend from claim 1; and claims 56-59 depend from claim 52. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, the Applicant respectfully requests that the rejections of claims 33-37, 38-43, 49, and 56-59 be withdrawn at least for the reasons set forth above regarding the claims from which they depend.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 11th day of June, 2009.

Respectfully submitted,

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